

ORDINANCE NO. _____, SERIES 2007

AN ORDINANCE REENACTING, AMENDING AND REPEALING VARIOUS SECTIONS OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES (“CODE”) CHAPTER 37, KNOWN AS PROCUREMENT PROCEDURES AND ADDING A NEW SECTION “LIQUIDATED DAMAGES.” (As Amended)

Sponsored By: Councilmen Kramer, Downard & Blackwell

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: Pursuant to the provisions of KRS 67C.115(2), and to maintain the Procurement Procedures set out in the Code, Chapter 37 is hereby amended and reenacted as follows.

§ 37.34 COOPERATION OF METRO GOVERNMENT DEPARTMENTS IN ADMINISTRATION AND ENFORCEMENT.

All departments of the Metro Government shall cooperate fully with the Commission in the administration and enforcement of the provisions of this subchapter.

§ 37.65 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHIEF PROCUREMENT OFFICER. The Chief Procurement Officer.

CONSTRUCTION. The process of building, altering, repairing, improving, or demolishing any structure or building owned or leased by the Metro Government or other improvements of any kind to any real property owned by the Metro Government.

CONTRACTOR. Any person, firm, corporation (including handicapped nonprofit), partnership, joint venture, association, or enterprise having a contract or attempting to obtain a contract with the Metro Government.

DIRECTOR. The Executive Director of the Louisville and Jefferson County Human Relations Commission.

FEMALE OWNED BUSINESS. A business enterprise legally constituted under the laws of the state, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, which enterprise is not an affiliate or a subsidiary of a business dominant in its field of operation and has employees identified in its own payroll records, working specifically for such entity and which entity is majority owned and controlled by a person or a combination of persons who are female and legal residents of the United States.

HANDICAPPED OWNED BUSINESS. A business enterprise legally constituted under the laws of the state, including but not limited to an individual, partnership, corporation (including nonprofit), joint venture, association, or cooperative, which enterprise is not an affiliate or a subsidiary of a business dominant in its field of operation and has employees identified in its own payroll records, working specifically for such entity and which entity is majority owned and controlled by a person or a combination of persons who are handicapped.

HANDICAPPED PERSON. A legal resident of the United States with a physical or mental disability caused by birth defect, bodily injury, illness, or other reason or as certified by a physician, and while constituting a physical or mental impairment is not otherwise related to a person's ability, either individually or as a participant in a

partnership, corporation, joint venture, or other business enterprise, to engage in contractual relations with the Metro Government.

MINORITY. Any legal resident of the United States having ethnic origin in the black racial groups of Africa; a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultures; a person having ethnic origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, Korea, China, the Philippines, Malaysia, Hawaii, and Samoa; a person having origins in any of the original peoples of North America who is an enrolled member of an Indian tribe recognized as such by the government of the United States or Canada; or a person having origins in the Eskimo or Aleut peoples and who is recognized as such by either a tribe, tribal counsel, or a suitable authority in the community, which authority may be an educational institution, religious organization, or a federal or state agency.

MINORITY OWNED BUSINESS. A business enterprise legally constituted under the laws of the state, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, which enterprise is not an affiliate or a subsidiary of a business dominant in its field of operation and has employees identified in its own payroll records, working specifically for such entity and which entity is majority owned and controlled by a person or a combination of persons who are minorities and legal residents of the United States.

PROCUREMENT. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, equipment, services, or construction. It also includes all functions that pertain to the obtaining of any supplies, equipment, services, or

construction, including description of requirements, selection, and solicitation of sources, preparation, and award of contracts, and all phases of contracting administration.

SUBCONTRACTOR. Any person, firm, corporation (including handicapped nonprofit), partnership, joint venture, association, or enterprise who has or seeks to have a contract with a contractor to perform work required as part of a contract or agreement between the contractor and the Metro Government.

§ 37.66 CERTIFICATION PROCESS.

(A) The Executive Director of the Louisville and Jefferson County Human Relations Commission, or his designee, shall develop and implement an eligibility process to identify and certify those minority, female, and handicapped business enterprises as are defined in this subchapter. Any business applying for certification shall have the burden of providing sufficient information and documentation to the Director to demonstrate it is eligible for certification. Failure of the business to provide the information requested by the Director will result in denial or revocation of certification.

(B) The Director may establish policies and procedures for accepting certifications from agencies, whether local, regional, or national, which certify minority, female, and handicapped business enterprises if the Director finds such agencies certification standards to be no less rigorous than the Director's own standards.

(C) The Louisville/Jefferson County Human Relations Commission- Enforcement Board shall ~~A Committee of three persons shall be appointed by the Mayor and approved by the Metro Council to~~ act as an Advisory Board to the Director in

connection with the policies, procedures, and determinations to be made in this subchapter. Any recommendation of the Advisory Board to the Director may be by vote or unanimous written consent.

§ 37.67 EXPENDITURES.

The Metro Government, by and through its agencies and individual departments, ~~shall use its best efforts to attain~~ adopts the following minimum goals for the utilization of certified minority, certified female, and certified handicapped owned businesses: 15%, certified minority owned businesses; 5%, certified female owned businesses; 0.5%, certified handicapped owned businesses, of its annual procurement expenditures.

§ 37.68 PROCUREMENT FROM BUSINESSES.

(A) In any procurement by or on behalf of the Metro Government, where such procurement activity is required to be advertised pursuant to this chapter, all such advertisements shall include, in addition to all other necessary information, the following language:

Participation by certified female owned, certified handicapped owned, or certified minority owned business entities or utilization by contractors of certified female, certified handicapped, or certified minority owned business as subcontractors, if the instant contract requires or warrants the use of subcontractors, is strongly encouraged ~~and will be a consideration in determining the award of this contract~~ and will be a consideration in determining the award of this contract.

(B) (1) In any procurement by or on behalf of the Metro Government, where such procurement activity is required to be advertised pursuant to this chapter, the Chief Procurement Officer, or a designee, shall advise, in writing, all contractors or participants in such procurement that they are to utilize their best good faith efforts to utilize subcontractors. ~~include solicit participation as subcontractors from~~ certified female owned, certified handicapped owned, and certified minority owned businesses as ~~subcontractors~~ if the procurement situation requires or warrants the use of subcontractors. Good faith efforts by contractors shall be made to reach the goals established by § 37.67. ~~Good faith efforts by contractors shall be made:~~

- ~~_____ (a) To include certified minority owned businesses as subcontractors on 15% or more of the total estimated cost of the procurement;~~
- ~~_____ (b) To include certified female owned businesses as subcontractors on 5% or more of the total estimated cost of the procurement; and~~
- ~~_____ (c) To include certified handicapped owned businesses as subcontractors on 0.5% or more of the total estimated cost of the procurement.~~

(2) While the foregoing guidelines on the utilization of certified female, certified handicapped, and certified minority owned businesses as subcontractors are recommended goals, failure to meet such goals will not result in disqualification from participation in the particular procurement process. Contractors, however, will be expected to provide written explanations to the Executive Director of the Human Relations Commission and Chief Procurement Officer of efforts they have made to utilize solicit participation as subcontractors from certified minority, female and handicapped owned businesses. ~~accomplish the recommended goals and the extent to~~

~~which they are successful in accomplishing the recommended goals will be a~~
~~consideration in the procurement process.~~ Good faith efforts of a potential bidder
include, but are not limited to the following:

(a) Attendance at pre-bid meetings, if any, scheduled to inform
MFHBEs of prime and subcontracting opportunities;

(b) Advertisement in general circulation media, trade
association publications, and minority and female business enterprise
media to provide notice of subcontracting opportunities;

(c) Communication with the Human Relations Commission
Office seeking assistance and identifying available qualified MFHBEs;

(d) Efforts made to select portions of work for MFHBE
subcontracting in areas with established availability or MFHBE
subcontractors;

(e) Providing a minimum of ten (10) days written notice to
known qualified MFHBEs that their interest in prime and subcontracting
opportunities or furnishing supplies is solicited;

(f) Efforts to negotiate with qualified MFHBEs for specific sub-
bids, including reasons for rejection of any such sub-bids offered;

(g) Efforts made to assist qualified MFHBEs meet bonding,
insurance, or other governmental contracting requirements; and

(h) As to each MFHBE contacted which the bidder, contractor or vendor, considered not to be qualified, a statement of the reasons for the conclusion.

(C) The exercise of these good faith efforts shall establish a rebuttable presumption that a potential bidder has complied with this good faith provision.

(~~C~~D) In any procurements by the Metro Government not required to be advertised pursuant to this chapter, every effort shall be made by the Chief Procurement Officer, or his designee, to ensure that certified female owned, certified handicapped owned, and certified minority owned businesses are included in the pool of persons or business entities otherwise qualified and considered for the particular procurement.

§ 37.69 ASSISTANCE OF BUSINESS.

The Mayor or his designee shall confer on a continuing basis with the Chief Procurement Officer and Executive Director of the Human Relations Commission to ascertain how best to assist certified female owned, certified minority owned, and certified handicapped owned businesses in learning how to participate in the procurement process of the Metro Government. With the assistance of the Chief Procurement Officer and the Executive Director of the Human Relations Commission, the Mayor or his designee may:

(A) Produce brochures or other written materials designed to help female, minority, and handicapped business enterprises to learn the procurement process of the Metro Government;

(B) Develop a list of certified female owned, certified handicapped owned, and certified minority owned businesses which list may be utilized to solicit the participation of certified female owned, certified handicapped owned, and certified minority owned businesses in procurements for which such businesses may be qualified;

(C) Initiate training sessions to assist female, minority, and handicapped business enterprises in learning how to effectively participate in the procurement process of the Metro Government; and

(D) Partner with organizations in the Louisville Metro community that focus organizational efforts to increase the procurement opportunities of minority-owned, women-owned and handicapped-owned business; and

~~(DE)~~ Initiate such programs as may be beneficial to the purposes of this subchapter.

~~§ 37.70 WAIVER OF BONDS FOR DISADVANTAGED SMALL BUSINESSES.~~

~~— (A) The Purchasing Department shall notify disadvantaged small businesses of the availability of bond waivers. To be eligible, a disadvantaged small business shall furnish credible and verified information of its status as a disadvantaged small business on forms to be provided by the Purchasing Department. The Purchasing Department shall determine whether the business is a disadvantaged small business based on criteria stated in this section and other factors deemed appropriate.~~

~~— (B) Performance, payment, fidelity, or any other bond generally required by the Metro Government after a contract is awarded shall not be required for any contract~~

~~for products, services, or supplies award in an amount less than \$25,000. This section shall not apply to bid bonds required.~~

~~(C) The Director of Purchasing may waive performance, payment, fidelity, or any other generally required bond for contracts awarded to disadvantaged businesses in amounts not exceeding \$25,000 for construction alteration, repair, and improvement of public facilities. This section shall not apply to bid bonds required. In determining whether bonds should be imposed or waived, the Purchasing Department shall consider the following factors:~~

~~(1) The business on previous projects has successfully completed a previous project in a timely manner and the quality of work and services provided were satisfactory;~~

~~(2) The business is a start up concern or has not been awarded contracts in the past;~~

~~(3) The nature and size of project, contract amount, or whether the project is considered an emergency.~~

§ 37.71 REVIEW OF PROVISIONS AND POLICIES; RULES AND REGULATIONS.

(A) The provisions and policies of this subchapter shall be reviewed annually by the Mayor and the Metro Council in conjunction with the establishment of annual goals. ~~Quarterly reports by the Director to the Mayor and the Metro Council shall be submitted.~~ Reports by the Director shall be submitted to the Mayor and each Metro Council member on a quarterly basis within thirty days of the end of each quarter. At a minimum, the report shall include the following:

- (1) The total number of Louisville Metro contracts by type;
- (2) The total number of MFHBEs available within Louisville Metro to provide work, by type;
- (3) The percentage of contracts awarded to MFHBEs, and
- (4) The percentage of contracts awarded to MFHBEs in Louisville Metro regional competitive cities.

(B) Rules and regulations governing the implementation of this subchapter shall be established by the Mayor. The Mayor shall provide those rules and regulations to the Metro Council.

§ 37.72 PERFORMANCE BOND PROGRAM.

~~———— (A) The Office of Economic Development shall establish a performance bond program which shall provide bonds for disadvantaged small businesses which have been awarded contracts for Metro Government projects. The office shall establish criteria for said program to ensure that all small disadvantaged businesses which have the technical ability to perform on Metro Government contracts be afforded that opportunity without regard to the traditional financial requirements imposed by private sector bonding companies. Such criteria shall include, but not be limited to, the following:~~

- ~~———— (1) Ability and willingness to perform on contracts on which they anticipate receiving assistance under the terms of this program;~~
- ~~———— (2) Inability of the business to be bonded by a surety or bonding company.~~

~~———(B)—— Performance and payment of bonds may be awarded under this program to contractors who have been awarded construction contracts in amounts not exceeding \$50,000. The cost of the bond will be \$35 per \$1,000 per the bond amount. Performance bonds shall be in an amount up to 100% of the contract amount and shall serve as security for the faithful performance of the contract. Payment bonds covering labor and materials shall be in the amount up to 100% of the performance bond amount.~~

~~———(C)—— Bonds shall be funded by and limited to a "self-guaranteed liability trust" composed of general funds or proprietary funds in the initial amount of \$100,000. This trust account shall serve as:~~

- ~~———(1)—— The reserve for bonds;~~
- ~~———(2)—— The depository for payments for bonds awarded; and~~
- ~~———(3)—— The reserve for funding the completion of a project for labor and materials in case of contractor default.~~

~~———(D)—— For bonds awarded, one-third of the bond amount shall be earmarked in the trust account. Upon satisfactory completion of a project, funds shall be released.~~

~~———(E)—— In the event a business performs unsatisfactorily and defaults, funds in the trust account will be used to pay extraordinary costs, over and above the original contract amount, of completing the project.~~

~~———(F)—— The Office of Economic Development staff will administer the performance bonding program and coordinate with the Purchasing Department the bonds required before the contract award. The Office of Economic Development staff will be responsible for developing documents and forms for program application; the~~

~~issuance of bonds; accounting for the reserve and earmarked funds for performance bonds, and depositing payments; releasing funds upon completion of a project and paying to the contracting departments the cost of completing project in case of default.~~

~~———— (G) ——— As an alternative to the performance bond program as established in subsections (A), (B), (C), (D), and (F) of this section, the Office of Economic Development shall be authorized to enter into an agreement to become a member of a nonprofit corporation organized for the purpose of combining the resources and contributions of its members to provide for and administer a bond program for minority contractors performing contracts for members of said corporation.~~

~~**§ 37.80 DEFINITIONS.**~~

~~———— For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~———— DEPARTMENT. The Department shall mean the Louisville and Jefferson County Purchasing Department.~~

~~———— PREFERENCE. The specific percentage identified in this section to be deducted from the bid quote of a qualified bidder.~~

~~———— HEALTH INSURANCE.~~

~~———— (1) ——— When the employer pays at least 50% of the total premium of health care coverage for all regular full time employees into a bona fide health care plan, which coverage is equal to or greater than the State Standard Low Indemnity Plan; or~~

~~———— (2) ——— When a collective bargaining agreement exists that provides for insurance coverage for employees not otherwise covered by their employer for all~~

~~regular full time employees, which coverage is equal to or greater than the coverage provided by the State Standard Low Indemnity Plan.~~

~~QUALIFIED BIDDER. A bidder who has provided health insurance to their employees as defined above and who meets all further requirements of this section. QUALIFIED BIDDER applies only to this chapter.~~

~~QUALIFIED BID RESPONSE. A bid response from a QUALIFIED BIDDER where the dollar amount meets or exceeds the requirements of this chapter~~

~~**§ 37.81 PREFERENCE FOR CONTRACTORS WITH EMPLOYEE HEALTH INSURANCE.**~~

~~(A) The Department shall give a preference to all qualified bid responses resulting from a request for bid or request for proposal issued by the Department that is in excess of \$100,000 where it is determined by the Department that the qualified bidder has provided health insurance to its employees in accordance with this section.~~

~~(B) If the bid received complies with the requirements of this section, then the bid price quoted by each qualified bidder shall be reduced by 2% for the purposes of determining the lowest bid price.~~

~~(C) Each invitation for bid or request for proposal that meets the requirements of this section shall state explicitly that preferences shall be afforded to qualified bidders in accordance with the provisions of this section.~~

~~(D) Each qualified bidder must provide to the Department a sworn certification verifying the type and amount of health insurance provided to its employees.~~

~~**§ 37.90 PROJECT LABOR AGREEMENTS.**~~

(A) "Project Labor Agreements" are terms established between a contractor(s), subcontractor(s), and the union(s) representing workers. Under a Project Labor Agreement, the contractors and subcontractors on a project and the union(s) agree on terms and conditions of employment for the project, establishing a framework for labor-management cooperation to advance the Metro Government's procurement interest in cost, efficiency, and quality.

(B) The Department of Purchasing in conjunction with a Department requesting a construction contract to be let in excess of ~~\$13,000,000~~ \$13,000,000 for public improvement projects shall consider the use of a project labor agreement. The decision to use a Project Labor Agreement shall be made on a case by case basis, prior to selecting the method of contracting for the project and shall be supported by written findings that clearly demonstrate how the use of a project labor agreement will benefit the project and the interests of the public. The decision to use a project labor agreement shall begin with a weighing of the important public policies favoring open competitive bidding with the Metro Government's interest in labor stability, cost, efficiency, quality, safety and timeliness.

(C) In making a decision on whether to use a Project Labor Agreement, the following factors shall also be considered:

(1) The potential for labor disruptions, such as strikes, lockouts, or slowdowns that could affect completion of the project;

(2) The number of trades and crafts anticipated to be used on the project;

(3) The need and urgency of the project and the harm to the public if completion of the project is delayed;

(4) The size and complexity of the project and the time needed for completion; and

(5) The benefits to the public from the use of a project labor agreement relative to cost, efficiency, quality, safety and timeliness.

(D) All project labor agreements shall:

(1) Designate a general contractor, project manager or similar construction firm or consultant which is experienced in the negotiation and administration of project labor agreements to manage and oversee the construction of the project including the development and implementation of a labor relations policy for the project;

(2) Set forth effective, immediate and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work;

(3) Acknowledge the Metro Government's goals for the utilization of certified minority, female and handicapped owned businesses as established in § 37.67 and the rules and regulations established thereunder;

(4) Be made binding on all contractors and subcontractors on the project through the inclusion of appropriate bid specifications in all relevant bid documents;

(5) Contain guarantees against strikes, slowdowns, picketing, lockouts, or other similar action during the project;

(6) Be open to competition for work to be performed and materials to be supplied to all union and non-union contractors, subcontractors, and material suppliers who are willing to abide by the terms of the project labor agreement; and

(7) Prohibit discrimination in job referrals as required by federal and state law.

§ LIQUIDATED DAMAGES.

Any entity awarded a contract that provides false information on a bid document or in a contract shall be liable to the Metro Government equal to 30% of the amount of the contract so awarded or may be deemed ineligible to bid or be awarded other bids by Metro Government for a period of no greater than two years in length. Any decision made by the Purchasing Director under this section which is adverse to an entity who has been awarded a contract with the Metro Government may be reviewed by the Chief Financial Officer at the request of any such entity, provided that a request for review shall be in writing, and shall specify with particularity the grounds for the request. Procedures for conducting any such review shall be within the sole discretion of the Chief Financial Officer and his or her decision after review shall be final.

§ 37.98 SEVERABILITY.

If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

SECTION II: This Ordinance shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Rick Blackwell
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

Council - Ordinance Reenacting and Amending Various Sections of LMCO Chapter 37 022707	2-27-07
LMCO 37 Sunset ReEnact & Amend by PaulBknDraft2.doc	2-28-07
<u>LMCO 37 Sunset ReEnact & Amend as Recommended 052307 by PR,WPO,JO,DCW,bknDraft3.doc</u>	<u>5-23-07</u>
<u>as presented in double underline and double strikethrough-bkn</u>	
<u>LMCO 37 Sunset Rcmttns 052307 by PR,WPO,JO,DCW,bkn & 053007 Cmte.Changes Draft4.doc</u>	<u>5-31-07</u>
<u>LMCO 37 Sunset Rcmttns 052307 by PR,WPO,JO,DCW,bkn & 053007 Cmte.Changes Draft4 Final .doc</u>	<u>5-31-07</u>